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The CIA Above the Law

The CIA, known around the world for taking the law into its own hands, has now demonstrated that it considers itself above legal restraint even at home. This new recklessness emerges from a suit brought by one Erik Heine, an Estonian expatriate who claims a long history as an anti-Communist freedom fighter. The defendant is one Juri Raus, another Estonian expatriate who admits to being an agent for the CIA. Raus had charged publicly that Heine, far from being a patriot hero, is really an agent of the KGB, the Soviet secret police. Heine sued Raus for slander. Some \$100,000—to say nothing of Heine's reputation—rides on the judgment. The case is now pending before Judge Roszel C. Thomsen in the Federal District Court in Baltimore.

Raus does not deny that he made the charges. But—incredibly—he maintains that he made them on orders of the CIA and, as a result, has no obligation to prove them. The CIA acknowledges that it sought to buy off the victim in an out-of-court settlement. But Heine, to the agency's dismay, has insisted on a trial to clear his name.

Surfacing to protect its man, the CIA filed an official affidavit with the court which says that "Raus was in possession of information furnished to him by the Central Intelligence Agency, and when he spoke concerning the plaintiff on such occasions he was acting within the scope and course of his employment by the Agency on behalf of the United States." Raus's attorneys argue that "under these circumstances, there arises in favor of the defendant an absolute privilege which precludes, even under a showing of malice, any possibility of recovery by the plaintiff."

How similar this contention sounds to the claim of the Stuart monarch, James I, who declared in 1609 that kings are "judges over all their subjects and in all causes and yet accountable to none but God only. They have power to exalt low things and abase high things, and make of their subjects, like men at the chess, a pawn to take a bishop or a knight. . . ." It was this contention, of course, which led to England's revolutionary war and the affirmation—

once and for all, we had thought—that kings (to say nothing of CIA agents) were subject to law.

The implication of the CIA's assertion is enormous. If not challenged, it means that an agency of government can inflict any manner of harm upon the citizenry and remain—upon claim, however shaky, of overriding national interest—immune from responsibility. The CIA says that a more elaborate defense might expose its entire counterespionage apparatus in the United States. Even if the allegation were justified (and there is no way to verify it), it scarcely entitles the CIA to stomp on people's rights in the process.

The CIA argues that the Supreme Court affirmed its power to libel Heine in a 5-to-4 decision (*Barr v. Mateo*) in 1959. The decision, one of the Warren Court's less felicitous ones, established the risky principle that an official could not be sued for libel committed in the course of duty. It did not say—which is what the CIA contends it says—that the government has a right to resort to slander as a conscious instrument of policy. It did not, furthermore, say the government could haughtily withhold any defense, on the ground of executive privilege. Attorney General Katzenbach, happily, has refused to lend his personal authority to the CIA position. Even Judge Thomsen, who has been sympathetic to the CIA's dilemma, was forced to observe: "I think that the plaintiff is entitled; assume the plaintiff is a Communist, assume he is everything you say, everybody has some rights in this country." The question, obviously, cannot go unchallenged. It is to be hoped that this case will soon find its way to the Supreme Court.